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Legal Process Offshoring: Population Level Learning

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ABSTRACT

In recent years, a new high-end industry has emerged from the offshoring phenomenon. Legal process offshoring is a niche market that has raised the bar for the business process offshoring industry. Driven by client demand, legal firms and corporate law divisions seeking cost saving solutions have turned to offshore entities for legal research, document drafting, paralegal services, and other administrative legal tasks. In theory, when populations of like organizations embark on a similar path, learning takes place and knowledge is gained on how best to undertake the endeavor. As more and more legal offices change routines and the way services are delivered to the client, the process of offshoring legal work should become more streamlined across industry outsourcers. The goal of this paper is to establish a framework and determine if population-level learning has taken place in legal process offshoring.

INTRODUCTION

Bill Gates is quoted as saying; “Your most unhappy customers are your greatest source of learning” (Said What, 2007). In recent years the rising costs of legal assistance and legal offices at all levels are feeling the pressure to keep fees competitive. One economical alternative is to contract out non-core services. Many businesses in the United States have used offshoring since the mid-1980s to lower costs. Consequently, knowledge on sub-contracting has been acquired. Efficiencies were gained by refocusing on core competencies and making more prudent use of available in-house resources...competitive advantage being the name of the game. Since then, vendor selection has evolved, contracts have become more complex, and best practices have emerged (Rivard & Aubert, 2008). In some cases, industry-specific standards have become known and norms have developed. The Internet and technology have enabled organizations, small and large, to gain a competitive advantage in the global offshoring marketplace.

Offshoring takes many forms. Specific business processes are outsourced to third party service providers (BPO), and knowledge- and information- related work (KPO) is carried out by workers in different countries (offshoring). Niches, or domain specific services, have sprung up within BPOs and KPOs. One such niche is legal process offshoring. Some researchers argue that firms within a specific industry will engage in similar foreign offshoring behavior because they face a common set of business drivers and challenges. Using the legal process Offshoring industry as a case of study, this paper explores whether or not population-level learning has taken place in the legal profession as it pertains to legal process offshoring (LPO).

RESEARCH CONTEXT

Detailed information on organizations offshoring legal processes was frustrated by a general industry resistance to discuss offshoring relationships. According to Ross (2007), a United Kingdom solicitor and Director at LawScribe, one of the world’s leading LPOs, acknowledgement of LPO use by law firms and corporations in the United States (U. S.) and United Kingdom (U. K.) is considered a “dirty little secret.” The unwillingness of law firms to go on record and confirm they are offshoring some legal work is also frustrating LPOs from publicizing deals with high-visibility clients. In this study, researcher used secondary literature published in practitioner and academic resources to explore how an emerging framework can be designed in a meaningful way to reflect developing trends in the Legal Process Outsourcing in the context of Population Level Learning.

Population-level learning is defined by Miner and Haunschild as “A systematic change in the nature and mix of organizational action routines in a population or organizations, arising from experience” (Rivard & Aubert, 2008). McKendrick (2001) suggests that “firms from the same nation are likely to adopt similar global strategies initially, but that, over time, the industry as a whole converges on the same blueprint for action.” According to Miner and Raghavan (1999), population-level learning “represents an emerging framework for organization analysis...It

emphasizes change in the nature and mix of organizational routines in a population of organizations arising from experience.” Organizational learning takes place when a firm either experiences an activity for itself or learns by imitating other firms. The result of population-level learning for the organization is closure of the gap between desired and actual outcomes. This has been sparingly studied in case of LPOs because of the emerging nature of it in the global marketplace.

Industry Pioneer. Successful offshoring of legal services to offshore entities began in 1995 with Bickel & Brewer, a litigation law firm out of Texas. The company was looking for ways to more efficiently handle the millions of pieces of information that confront attorneys on a case. The firm opened a subsidiary business in Hyderabad, India. It started with typical BPO administrative work—word processing and filing services performed by non-lawyers. The firm’s outsourced services have grown to legal research and drafting of patent applications performed by Indian lawyers (Bellman & Koppel, 2005); the subsidiary has since spun off into a separate business entity. General Electric followed in 2001, offshoring legal compliance and research work to its captive offshore center (Brook, 2005), which in 2007 received \$3 million of GE’s routine legal work (Cotts & Kufchock, 2007). There is limited number of instances, where legal process work has been offshored. Thus, there is a need to analyze the existing LPO academic/practice literature to synthesize the nature of emerging trends.

ANALYSIS

LPO Levels. This study categorizes legal processing into four categories based on the progression of complexity in services outsourced and published job description norms. These services have typically moved up the value chain as the LPO industry matured, which seems to indicate population-level learning.

- Level 1 services consist of typical business administrative work: word processing, filing services, copying, billing, document editing, and information technology.
- Level 2 services are slightly more complex and are typically performed by a paralegal in the West but are being performed by law school graduates in LPOs: summarize legal documents, research law cases, draft legal documents, draft patents, and monitor contract compliance.
- Level 3 services generally require the skill of a highly experienced paralegal or junior associate: gather evidence, draw up legal documents, and file briefs.
- Level 4 services are partner-level legal work: conduct criminal and civil law suits, advise clients on rights, formulate defense, interview clients and witnesses, and represent clients in court.

Business Driver. Since the beginning, economics has been a driving factor to outsource goods and services. This takes on a new twist in the legal industry. Increased market share is the main objective for legal process offshoring, along with improved operational efficiency and convenience. The obvious benefits are increased levels of service, freeing up of management time, access to expertise, and cost reduction (Lang, 2007). Whether it is a high return on investment for corporation legal departments or increased market share and higher profits for the small private law firm, the offshore LPO yields cost savings.

Cost Savings. In the U. S., the client rather than the industry is driving legal process offshoring (Ross, 2007). U. S. law firms are required under ethics rules to disclose markups on what is paid foreign attorneys who are not licensed to practice law in the U. S. (Cotts & Kufchock, 2007). For corporate legal departments, this is an opportunity for a cost reduction that can be shared by an organization that has a responsibility to stockholders. Conversely, large private law firms, which are inherently profit driven, are not motivated to reduce client fees and oftentimes rebuff offshoring outright because it cuts into their margin. Small private firms, who do not have in-house expertise, can utilize the LPO to enhance service offerings. *Time* recently published an article that denotes the U. S. national average billing costs for legal work compared to the cost charged by the typical Indian LPO (Table 1).

Typical Billing Cost	United States	India
Document review	\$7-\$10/page	\$1/page
Redact litigation email	\$60-\$85/hour	\$10/hour
Junior associate	\$225/hour	\$10-\$25/hour
Partner (or equivalent)	\$318-\$500/hour	\$25-\$90/hour
Lawyer starting salary	\$160K/year	\$6K-\$30K/year

Source: (Murali & Ghosh, 2007; Barlyn & Robinson, 2008)

Table 1: Typical Billing Cost in United States versus India

The large disparity in fees charged provides pronounced savings to corporate legal departments and increased levels of service for small firms, while threatening the bottom line for private practice because learning has taken place within the client population. Armed with the knowledge of how little offshore LPOs charge for their services, some clients are directing private law firms to offshore legal work on their cases in order to negotiate lower fees. The threat is they will take their business elsewhere. According to the American Bar Association, the general rule of thumb is that cost savings are about 30 to 40 percent in Israel and approximately 50 to 60 percent in Asia (Wollins, 2007). Legal entities have capitalized on the cost/value equation by offering a mix of in-house and offshore services.

Operational Efficiency. In addition to cost savings, the increased efficiency of offshoring legal processes results in quicker response time to clients. For example, India has a 9-13 hour time difference with the U. S. American attorneys can dictate correspondence or request research via E-mail to India at the end of the day and in the morning have a work product on their desk. The turnaround time of virtual 24/7 operations has realized an added benefit by integrating LPOs and creating a hybrid solution of resources from which the firm can draw.

Convenience. The convenience of offshoring to LPOs differs depending on the country in which the LPO resides. For example, in India, British common law is the foundation of the country's legal system. This is an attractive bonus for legal clients in the U. S. and United Kingdom (U. K.) and reduces the "legalize" barrier. The Indian government, seeing the economic potential of offshoring, has invested heavily in education. For the legal market dynamic, India graduates more than 80,000 law students each year (Lang, 2007). Approximately 3,500 have jobs upon graduation, which leaves many well-educated legal minds looking for a career niche the LPO has filled.

In Israel, there are a growing number of expatriate Americans, certified by the American Bar Association, ideally suited to provide complex legal work with little to no supervision at a reduced cost. The offshoring model for Israel is project-oriented, short assignments rather than long, strategic relationships. According to the Jewish Cooperative Library, "12,000 Americans are living in Israel...thousands of which are lawyers" (Wollins, 2007). This appears to be a sustainable offshoring alternative to the Indian LPO offering with the added convenience of American bar association attorneys.

In the last few years, large BPOs have begun entering the LPO market. In November 2007, Infosys, India's second largest IT company, announced their intent to enter the legal offshoring niche by launching an LPO operation (Ross, 2007). According to ValueNotes, an Indian independent research company, this signals the inevitable consolidation of smaller LPOs (Ross, 2007). The indication is the top 10 LPOs in India (Table 2) may be ripe for acquisition in the future. This points toward a maturing of the industry and population-level learning.

Challenges and Barriers. There are numerous challenges and barriers to population-level learning in legal process offshoring. As for challenges, confidentiality, data security, conflicts of interest, lost of control, trust, and supervision top the list. Although these challenges are not necessarily unique to the legal profession (i.e. health care), the inherently risk-adverse legal profession has only half-heartedly acknowledged the forces of globalization. Ross (2007) referred to this as a "tipping phenomenon" among large legal firms whereby no one wants to be first but they also do not want to be left behind. He noted the lifecycle of learning for the levels of service complexity rise approximately every five years.

In his report, Ross stated in 2007 that he believed "within the next five years...offshoring routine level legal work will have become the norm for the world's leading law firms and corporations" (Ross, 2007). For the purpose of this study, this equates to the commoditizing of Level 2 LPO services, another indication of population-level learning.

Top 10 Indian LPOs	Services Provided	Website
Pangea3	Contract drafting, legal research, drafting court documents, patent applications and monitoring, document review and analysis	pangea3.com
G B Law Solutions	BPO, legal transcription, document management, deposition summaries, legal translation, data entry services, secretarial services, scanning and OCR services, paralegal or legal assistance and professional support lawyers	
King, Stubb & Kasiva	Corporate and securities, mergers and acquisitions, securitization, intellectual property, funds and other pooled investments, bankruptcy and corporate reorganization, bank and commercial lending, public finance, real estate, labour, tax, as well as trusts and estates	ksandk.com
Legal Source	Transcription, coding, document management, scoping, billing, secretarial and paralegal services	
Economicalservices.com	Family law, employment law, corporate law, bankruptcy law, contract law, real estate law, construction law, intellectual property law, legal research and drafting	
Trustman Legal Outsourcing	Legal research, competitive intelligence, litigation support, contract drafting and management, contracting review, securities documents, patent services, immigration law, employment law, injury compensation law, wills and probate, transcription, coding, document management, scoping, billing, secretarial and paralegal BPO services	http://www.trustman.org
LegalSonic	Legal transcription, legal jobs, eviction services, outsourcing in India, IT outsourcing, intellectual property audit, Intellectual property management, copyright infringement	legalsonic.com
Office Tiger	Litigation support, class action solution, contract attorneys, CPAs etc., contract management, document review, e-discovery, records management, SOX compliance solution	outsourcing.rrd.com/ wwwFinancial/OutSourcing/ Solutions/legalservices.asp
Thuriam BPO & Knowledge Services	Legal transcription, deposition summaries, litigation support, legal billing, legal coding, court reporting, legal translation, paralegal services, e-filing services, legal BPO, legal research, legal document management, legal advice, legal services, scanning and OCR services, federal law support, state law support, certified attorneys, law office support, legal office, legal practice, legal opinions, legal IT, law firms, legal companies, legal India, legal services, legal consulting, scoping services, legal transcriptionists, legal dictation, legal typing services, legal information services	thuriam.com
eCase Solutions	Legal and business research, legal drafting, deposition summaries, paralegal services, patent review, and database creation and maintenance	ecaseinc.com

Table 2: Top 10 Indian LPOs¹

Cultural resistance remains the largest barrier to offshoring in the legal industry. Protectionism and secrecy spread fear and doubt about LPO models. David Perla, co-chief executive of Pangea3 LLC, an offshore legal services company based in New York and Mumbai, stated, “They [law firms] see any competition as bad and they’ll raise any issues as to why you shouldn’t go offshore” (Cotts & Kufchock, 2007). Most U. S. law firms decline to comment on offshoring. Perla went on to state, “I don’t think law firms are ashamed . . . they view it as a competitive advantage” (Cotts & Kufchock, 2007). On the other hand, according to Weber (2007), “. . . many firms do not want to

¹ Table 2, Top 10 Indian LPOs, is a compilation of data retrieved from a report by Chillibreeze Solutions Pvt. Ltd. (Chillibreeze, 2008), a content and design service provider, and the top 10 LPO company websites.

risk alienating clients and damaging their reputations by an often unpopular practice” [of offshoring]. The odd call among some students at the country’s top law firms is to unionize lawyers and petition the U. S. government to impose trade barriers on legal services...this from the future junior associate seeking a \$160,000 position in a large U. S. law firm. Clearly, social capital has not developed between the majority of the U. S. legal industry and LPOs.

Smith, Dornan, Dehn (SDD), a global solutions company in India, tried to debunk some of the legal process offshoring myths in popular use for those who wish to listen (Murali & Ghosh, 2007):

- Myth 1. Indian lawyers lack the skill and aptitude for complex Western legal work.
- Myth 2. You get what you pay for and costs are low in India.
- Myth 3. More complex work...higher risk of ethical or confidentiality breach.

Suffice it to say, the quality in Indian legal training, communication, and exams is exceptional; high quality work and low cost is not an oxymoron; and proper supervision by skilled, licensed attorneys, as well as contractual agreements, means breaches in ethics and confidentiality are no more common offshore than at home (Murali & Ghosh, 2007).

RESULTS

Few case studies exist on the subject of LPOs. One study of note was published by the Georgetown University Law Center. Entitled *Flattening the world of legal services? The ethical and liability minefields of offshoring legal and law-related services*, the case study examined offshoring of legal and law-related services and the impact on the industry. The framework was one of relationships created as a result of service delivery. Reputation, economic benefits, and risks were examined. The authors concluded although the non-U. S. lawyers benefited from the association, the relationship enlarged the pay gap that already existed in the industry between U. S. and non-U. S. lawyers. In law firms, client trust and confidence was replaced by an active and aggressive firm monitoring role of offshore entities, which reduced cost savings and placed a burden on internal communication and control functions (Daly & Silver, 2007).

On the other hand, the case noted offshoring challenged typical corporate outside counsel, which created beneficial competition. Although the offshore LPO did not technically offer legal advice (like an outside counsel), the service provided reduced a corporation’s reliance on outside U. S. legal firms (Daly & Silver, 2007). That said, there are still client risks in this client-vendor relationship: tarnished reputations, quality control, and reduced training opportunities for junior associates are areas of concern (Daly & Silver, 2007). One solution the authors suggested was detailing junior associates to offshore LPOs as a learning/training experience as well as an opportunity to build international relationships. In the end, the case study purported the risks rendered the building of relationships between U. S. legal entities and offshore LPOs not as efficient as possible (Daly & Silver, 2007). It would seem the challenges and barriers to offshoring legal work mentioned both in the Georgetown case and this paper could have a negative impact on further population-level learning.

Emerging Conceptual Framework of LPO’s Population Level Learning

Figure 1 below depicts a proposed conceptual framework for population-level learning in legal process offshoring. Three business drivers, cost savings, convenience, and improved operational, are the foundation for learning. Over time, beginning in 1995, a change in organizational routines became known. From there, the complexity of service levels outsourced increased. The levels built upon one another and learning occurred.

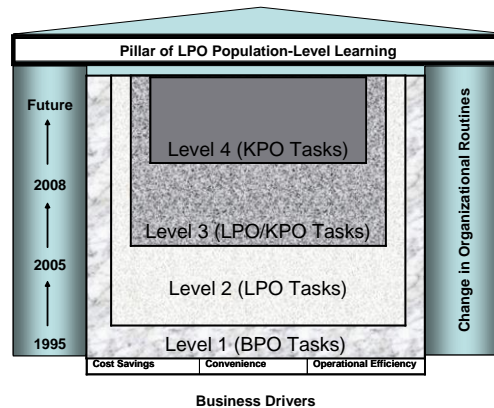


Figure 1. Emerging Framework for LPO Population-Level Learning

Despite the challenges, there is evidence of population-level learning within legal process offshoring. Organizations derive value from such services because the level of maturity in delivering processes by the service provider has developed over the last 13 years. Corporate legal departments that were the early proponents of offshoring seem to have progressed the furthest in the level of legal work outsourced. The commoditizing of Level 2 legal work as well as the acquisition of LPOs by larger BPOs (and consolidation of LPOs) points to an emerging framework. A hierarchical progression from Level 1 to Level 2 and limited Level 3 outsourced services shows a global offshoring strategy is slowly emerging in legal process offshoring.

CONCLUSIONS

Legal process offshoring has much untapped potential and population-level learning is still in its formative years. In *Business Law Today*, Wollins (2007) stated the U. S. Department of Labor estimates the total amount of legal work sent offshore will remain at 2 percent through the next few years). He went on to say he believes offshore LPOs need to not only service large legal entities, but the smaller customers as well in order to make the market sector economically feasible for all because cost reduction remains an important motivator. Ross (2007) called for the need for trade associations, independent training programs, regulatory bodies, and best practice procedures, which would further solidify population-level learning. If the predictions of the U. S. Bureau of Labor Statistics and Forrester Research come to fruition, 35,000 legal jobs will have moved offshore by 2010 with a price tag of \$605 million (Daly & Silver, 2007); \$4 billion by 2015 (Lin, 2008). At such time that significant additional public release of legal process offshoring data becomes available, more thorough research could be conducted on population-level learning in this field.

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